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Executive Office of Health and Human Services
Department of Public Health
Division of Health Care Quality
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Circular Letter: DHCQ 08-03-484

TO: Long Term Care Facilities
Hospital Administrators

FROM: Paul I. Dreyer, Ph.D.
Bureau Director

DATE: March 25, 2008

RE: Use of Cameras during the Survey Process

The purpose of this Circular Letter is to present the Department's policy regarding the use of cameras during the survey process in Massachusetts. The policy is based on principles contained in the 2006 Center for Medicare & Medicaid Services ("CMS") memorandum (S&C-06-33), which is attached for your review.

According to this policy, surveyors may use a camera during surveys to capture evidence of wounds, unclean environments, resident abuse and other conditions and circumstances in which a photograph can serve to support survey findings. Photographs supplement written documentation but do not replace it. Surveyors who choose to use photographic evidence will be subject to the following guidelines:

1. Surveyors do not require facility permission to gather photographic evidence, but if they intend to gather such evidence during the survey process they will notify the facility to the maximum extent feasible. Surveyors do not require permission from facility employees to photograph them while they are engaged in the performance of their duties;
2. Photographic evidence is part of supporting documentation; it does not constitute survey findings;
3. Cameras used for the purpose of photographic evidence are the sole property of the Commonwealth. Surveyors may not use their own cameras to gather photographic evidence;

4. Generally, photographs taken will constitute a complete set, which includes the following three shots:
 - An overview photograph to illustrate the relationship between objects
 - A mid-range photograph of the object in its immediate surroundings
 - A close-up photograph to illustrate detail, including a scale or other reference to show actual size;
1. Surveyors must ask for a resident or patient's written permission, to the maximum extent feasible, to take his or her picture. If a resident or patient is unable to consent, the surveyor will ask his or her legal surrogate for consent. If the legal surrogate is not available, the surveyor shall use discretion in determining whether a photograph is necessary to support a finding of noncompliance. If a resident or patient refuses to have his or her photograph taken, the surveyor will respect his or her decision. Surveyors will avoid gathering photographic evidence that reveals a resident or patient's identity;
2. Only a licensed nurse, physician's assistant, or physician surveyor may gather photographic evidence showing a sensitive area such as a resident or patient's genital or rectal area or female breasts. The facility should ensure that a nursing staff member is present as such photographs are taken.

Photographic evidence will be gathered evenly in all four regions during surveys of hospitals, clinics, long term care facilities, clinical labs, and renal dialysis centers. Photographic evidence will be maintained for three months. After three months, a hard copy of each photograph will be stored in the facility folder. Photographic evidence is subject to public disclosure in the same manner as other documents gathered or created during the survey process, photographs of residents and patients shall be treated in the same manner as medical records.

Please direct any questions you have regarding this Circular Letter to Jill Mazzola, Assistant Director, at (617) 753-8106.

enclosures